

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11**

ELON UNIVERSITY

Employer

And

Case 10–RC–231745

SEIU WORKERS UNITED SOUTHERN REGION

Petitioner

REGIONAL DIRECTOR’S DECISION AND ORDER

I have considered the evidence and arguments that the parties presented on the issues. As described below, based on the record and Board law, including the Board’s decisions in *Pacific Lutheran University*, 361 NLRB 1404 (2014), *PCC Structural*s, 365 NLRB No. 160 (2017), and *United Operations*, 338 NLRB 123 (2002), I find that the petitioned-for unit of the Employer’s limited term, visiting, and adjunct faculty employees in its undergraduate schools is appropriate.¹

I. INTRODUCTION

The Employer, Elon University, a North Carolina corporation with its principle office located in Elon, North Carolina, is a private non-profit university engaged in the business of providing higher education. Petitioner, SEIU Workers United Southern Region, filed this petition under Section 9(c) of the National Labor Relations Act.² Petitioner seeks to represent a unit of all non-tenure-track faculty employees teaching at least one credit-bearing undergraduate course in the College of Arts and Science, School of Communications, School of Education, or the Martha & Spencer Love School of Business, including visiting faculty, limited term faculty, adjunct faculty, and instructor employees. There are approximately 181 faculty employees in the

¹ The Petitioner also argues that “instructor” faculty employees must be in the petitioned-for unit. For reasons set forth in this decision, I find that the Employer does not use an “instructor” designation and it would be inappropriate to include the non-existent designation in the unit.

² The parties stipulated that there is no contractual bar to the petition.

petitioned-for unit. Petitioner argues that the petitioned-for faculty employees are not managerial employees and share a sufficiently distinct community interest from other excluded faculty employees.

The Employer contends that the unit Petitioner seeks is not appropriate for several reasons. The Employer argues that the employees in the petitioned-for unit, as its other faculty employees, are managers within the meaning of the Act because they are involved in “shared governance” of its academic, financial, personnel, and other policies. The Employer also argues that the visiting, limited term, and adjunct faculty employees do not share a community of interest with one another. The Employer further argues that petitioned-for faculty employees from one school do not share a community of interest with those in another school.

A hearing officer of the Board held a hearing in this matter, and the parties subsequently filed briefs, which I have duly considered.

To give context for my discussion of the issues, I provide below a brief overview of the Employer’s operations, including a description of each faculty job classification’s roles and responsibilities to their respective schools and the university. Afterwards, I will analyze the facts based on the Board’s five-factor test in *Pacific Lutheran University*, 361 NLRB 1404 (2014), explaining why the balance of factors demonstrate that the petitioned-for unit faculty employees are not managerial employees. I will then review the facts according to the Board’s eight-factor test set forth in *PCC Structurals*, 365 NLRB No. 160 (2017), and *United Operations*, 338 NLRB 123 (2002), explaining why those factors establish that the petitioned-for unit is appropriate.

II. FACTS

A. University Overview

Elon University is primarily an undergraduate institution, consisting of six schools; four undergraduate schools and two graduate schools.³ The undergraduate schools are the College of Arts and Sciences, the School of Business, the School of Communications, and the School of Education. Students attend courses on a “4-1-4” calendar, taking four courses in the fall and spring semesters, and one course in the winter term. Each of the four undergraduate schools has its own dean who is responsible for overseeing and administering that school. The schools divide further into different departments within that each area of study. For example, the accounting department exists within the School of Business. Finally, each department within the schools has its own faculty who are responsible for teaching the courses, conducting research in that area of study, or providing other services through the school.

Each school varies by the size of its faculty and the courses it offers. The College of Arts and Sciences is the University’s largest, consisting of 395 faculty employees. The Business School has 91 faculty employees; the Communications School has 64; and the School of Education, 27. Faculty employees teach courses related to their school’s area of study, regardless of whether the course is required for a student’s major or is part of the Employer’s core curriculum. The core curriculum is a pool of classes from which the Employer requires all undergraduate students to earn course hours regardless of the student’s major. Core curriculum classes cover a broad range of studies. Most courses come from the College of Arts and

³ The parties agreed at hearing that the Employer’s graduate school faculty — those in its School of Health Sciences and Law School — should be excluded from the unit. Likewise, the parties introduced almost no evidence regarding how the schools operate, make decisions, or delegate responsibilities to its faculty. Since prior Board precedent establishes that a bargaining unit involving undergraduate schools and excluding graduate schools can be appropriate, I will limit my review to the four remaining schools. See e.g. *University of Miami*, 213 NLRB 634, 639 (1974).

Sciences, and are, therefore, taught by its faculty, but the other three schools also contribute faculty and courses to the pool of core courses.

Generally, each school has its own buildings on campus that house its faculty and classrooms. For example, the College of Arts and Sciences covers a broad range of studies, including engineering, music, math, religion, biology, and recording arts.⁴ Being so large, the school has 11 buildings spread across campus. The School of Education has one building on the main campus, the Business School has two buildings in the northeastern portion of campus, and the School of Communications has four buildings to the southwestern corner of the campus. With the exception of the law school, the Employer's schools are located within walking distance of one another.⁵ A school's faculty employees often work and teach courses in the school's buildings and area of study.⁶ Even in the unlikely event a faculty employee teaches in a building outside of his or her school, the faculty employee has little to no work-related interaction with faculty from the other school while in the building.

Aside from their field of study and physical location on campus, the schools also differ based on how they are accredited. For example, the Southern Associations of College Schools is the body that accredits the few College of Arts and Sciences departments that require such approval. Meanwhile, the Association for the Advancement of Collegiate Schools of Business accredits the School of Business, the Accrediting Council and Education in Journalism and Mass Communications accredits departments within the School of Communications, and both the

⁴ This list is not exhaustive of the areas of study available within the College of Arts and Sciences.

⁵ The Law School is located in Greensboro, North Carolina. The School of Health is located closer to main campus in Elon, North Carolina, but is set apart by train tracks.

⁶ Only two instances appear in the record in which faculty employees from one school taught a course in another school's building: Adjunct faculty employee Sharon Eisner testified that she taught core classes in several other schools' buildings, and Limited-term Biology faculty employee, Dr. Catherine Bush, taught a biology course in a Business School building.

National Council for the Accreditation of Teacher Education and the Council for the Accreditation of Educator Preparation accredit the School of Education. The accrediting bodies review each school to determine whether it meets the standards for that area of study. Areas of review include the school's curriculum, faculty qualifications, student admissions, resources, and mission. Though they allow the Employer to maintain supporting faculty that only teach courses, accrediting bodies often require permanent faculty to act beyond direct teaching responsibilities, such as being involved in student advising, research, or participation in school governance.

B. University Structure

The Employer's management structure begins with its Board of Trustees. Under the Board of Trustees' authority and direction, the President serves as the Employer's chief officer and is responsible for overall administration of its affairs. Beneath the President, the current Provost/ Executive Vice President, Dr. Steven House, is responsible for overseeing academics, while various other vice presidents manage areas including advancement, business finance and technology, and communications. Several school deans, provosts, vice presidents, and other staff report directly to House. Each school has a dean who is responsible for the overall direction of its program, and who supervises department chairs that lead their respective departments within each school.

The Employer prides itself on delegating certain decision-making powers to its faculty employees through "shared governance." In shared governance, a faculty employee may have the opportunity to sit on a committee or vote at a faculty meeting that could play a part in decisions that affect the university. For example, faculty employees may sit on committees that "determine courses of study, requirements for admission, and standards of performance,"

“determine and recommend to the Board of Trustees standards for selection, promotion, and tenure of faculty members,” and “define ethical and professional standards for members of the faculty.” The Employer’s President and Board of Trustees always retain the right to review and approve those decisions.

As part of its shared governance model, the Employer maintains an Academic Council, establishes various committees, and schedules faculty meetings. The Academic Council is a 19-member committee that makes recommendations to the Board of Trustees regarding the Employer’s overall educational program. For instance, the Academic Council has been involved in changes to the Employer’s bylaws, revisions to the Employer’s mid-semester grade policy, and creation of an engineering major. Of the Academic Council’s 19 committee seats, only one is designated for limited term or adjunct faculty employees.⁷ There is no evidence that more than one limited-term or adjunct faculty employee, or any visiting faculty employees, have ever served on the Academic Council. From 2012 to the present, only two such employees served on the Academic Council: Adjunct Billy Summers and Adjunct Leigh Ann Whittle.

The Employer also established 14 standing committees that review and recommend changes to specific academic areas. The Standing committees are the Academic Standing Committee, Academic Technology and Computing Committee, Admissions Committee, Athletic Committee, Curriculum Committee, Core Curriculum Committee, Faculty Research and Development Committee, Global Education Curriculum Committee, Graduate Council, Library Committee, Post-Probationary Faculty Development Review Committee, Promotion and Tenure Committee, Religious and Spiritual Life Committee, and Student Life Committee.

⁷ Limited term, adjunct, and other faculty employee designations are described more fully later in my decision, but both make up a portion of the petitioned-for unit.

The Employer’s bylaws, as set forth in the faculty handbook, detail the duties and responsibilities of each standing committee, including rules regarding who may serve on each committee. The bylaws draw a distinction between “teaching faculty” and “faculty.” A seat reserved for teaching faculty employees may only be filled by a faculty employee that the Employer considers permanent, such as a tenure track, lecturer, or visiting faculty employee. The Employer does not consider limited term or adjunct faculty employees to be permanent teaching faculty and they therefore cannot be elected to a teaching faculty seat. However, a seat designated for “faculty” (as opposed to “teaching faculty”) is open to all faculty, including limited term or adjunct faculty employees. According to the bylaws, it is theoretically possible for limited term and adjunct faculty employees to serve on five of the 14 standing committees. However, Provost/Executive VP House testified that “very few part-time [faculty]⁸ get appointed to these types of committees,” and the nature of a limited term or adjunct’s short contract make it difficult to serve full terms on a committee. There is no evidence that any limited term or adjunct faculty employees have ever served on a standing committee.

The Employer’s shared governance model also allows for the creation of other committees, including committees within particular schools or departments. School or department committees may review several university-wide topics such as long-range planning, institutional review, teacher education, and experiential education. Meanwhile, schools and departments may create committees to review their own specific issues. For example, Dr. House testified that the Employer created public health, astronomy, and music production and recording arts majors. The proposals for these majors originated in each respective school’s curriculum committee, made up of faculty employees, before moving forward through the approval process.

⁸ The Employer often uses the term “part-time” and “adjunct” faculty interchangeably.

The record contains no evidence that any current limited term or adjunct faculty employee serves, or has served, on such committees.⁹

Finally, the Employer may also present issues directly to the faculty employees in a faculty meeting. Faculty meetings occur several times per year and allow various faculty employees to vote on each item. The Employer invites all faculty employees to attend the meetings. However, only faculty employees that work 18 or more credit hours per year are eligible to vote. Eligible faculty employees would include all permanent and visiting faculty employees, along with any limited term or adjunct faculty employees who satisfy the requirement. Faculty meeting votes are informal, in that a measure passes if no faculty employees raise a question about the issue presented. The Employer does not record attendance from each meeting, including whether any petitioned-for faculty employees attended the meeting. Only two petitioned-for faculty employees testified regarding faculty meetings: limited term Professor Dr. Catherine Bush testified that she attended one faculty meeting in almost seven years, and Adjunct Sharon Eisner testified that she attended one faculty meeting in the last 11 years.

The University's creation of an engineering program is demonstrative of how proposals pass through the Employer's shared governance procedure. According to House, the two-year process began when the physics faculty employees asked for the engineering program. From there, House worked with the Dean of the College of Arts and Sciences and the physics department to formulate and present a feasibility study to the Board of Trustees for approval. Once approved, the department curriculum committee created a curriculum, which it passed through the University curriculum committee. After further review, the Academic Council

⁹ Only one instance of a petitioned-for faculty employee serving on a committee appears in the record. Department Chair Marna Winters testified that as an adjunct and limited term faculty employee between 2008 and 2011, she served on several school committees. I do not find this to be indicative of the Employer's current practice.

assessed and voted on the proposal. Finally, the Academic Council presented the engineering proposal at a faculty meeting. According to faculty meeting minutes from December 1, 2017, the proposal passed with no questions from the faculty employees. Aside from the single seat reserved for adjunct faculty employees on the Academic Council, there is no explicit evidence that any limited term or adjunct faculty employees were involved in this process, at any point.¹⁰

C. Faculty Roles and Responsibilities

The Employer breaks down its faculty into seven job classifications based on length of service, level of education, and number of course hours. The Employer considers five faculty classifications to be permanent positions, denoted as “teaching faculty” in its handbook. Tenure positions are permanent with no designated length of service time. A tenure position requires the faculty employee to have a doctorate degree and to carry at least a 24 course-hour class load per year. A tenure track position puts the faculty employee on the path to a tenure position and mirrors its requirements, except that a tenure track faculty employee has a designated four- to six-year probationary period. Continuing track positions were created to allow other faculty to have a similar path as tenure track without directly leading to a tenure position. Continuing track has the same basic requirements of tenure track positions, including an expectation of renewed employment. Lecture tracks require the faculty employee to carry a heavier course load and to focus mostly on teaching students. Lecture tracks require a 26 to 28 course-hour class load per year, but only require the faculty employee to have a master’s degree. Collectively, the Employer has 399 faculty employees in these four categories.¹¹

¹⁰ Adjunct Bill Simmons, in his capacity as the lone adjunct faculty employee on the Academic Council, may have been involved in that process but there is no record evidence to support that conclusion.

¹¹ There are 262 faculty employees in the College of Arts and Sciences, 63 in the School of Business, 54 in the School of Communications, and 20 in the School of Education.

Visiting faculty is the Employer’s fifth permanent faculty job classification, though the parties disagree on whether the position should be considered permanent.¹² Visiting positions require the faculty employee to have a master’s degree and teach a 24 course-hour class load per year. Visiting faculty employees may apply for a tenure, continuing, or lecture track position if available, but the visiting appointment can only last for a six-year period; three years renewed past the original three years. Even though they may serve for up to six years, visiting faculty employees often have year-to-year contracts with no expectation of reemployment. Based on its unique contract situation, Petitioner argues that the visiting faculty position is temporary rather than permanent. The Employer only has two visiting faculty employees, both of whom work out of the College of Arts and Sciences

The University has two other faculty job classifications, both of which are considered temporary positions. Limited term faculty employees receive contracts on a year-to-year basis for up to four years, with no expectation of continued employment. Limited term faculty must have a master’s degree and work a 24 course-hour class load per year. Similar to visiting faculty employees, limited term faculty employees may apply for tenure, continuing, or lecture tracks if available. Part-time or adjunct positions differ from other positions in that there is no threshold number of course hours they must work per year. Therefore, unlike a full-time faculty employee who may be on campus all week, an adjunct faculty employee could spend as little as one to three days on campus per week. An adjunct faculty employee’s contracts are semester-to-semester rather than annual contracts, and there is no expectation of renewal or continued employment after the contract ends. The Employer only requires that adjunct faculty employees possess an education level that meets the Southern Association of Colleges and Schools

¹² Whether visiting faculty employees should be included in the petitioned-for unit is at issue. Therefore, so as not to confuse terminology, I will use “permanent faculty” to denote only the following classifications: tenure, tenure track, continuing track, and lecture track.

requirement, rather than requiring a doctorate or master’s degree. There is no evidence that the Employer permits adjunct faculty employees to apply for higher tracks. In total, the Employer has about 42 limited term and 134 adjunct faculty employees.¹³

Petitioner argues that the Employer has an eighth faculty job classification called “instructor.” However, there is no evidence that the Employer uses that designation in practice. The Employer’s faculty handbook describes an instructor as a visiting or limited term faculty employee who does not hold a terminal degree. There is no evidence that the Employer currently has, or has ever employed instructors. Therefore, based on record evidence, the Employer only uses the following faculty job classifications: tenure, tenure track, continuing track, lecture track, visiting, limited term, and adjunct. For that reason, despite its inclusion in the petition, any reference to the “petitioned-for” positions will exclude instructors.¹⁴

Job classification changes appear to be rare for petitioned-for faculty. Department Chair Marna Winters testified that she served as an adjunct from 2008 to 2011, a limited term faculty employee during the 2011-2012 school year, and transitioned to the lecture track in 2012. Limited term Assistant Professor Bush served as an adjunct off and on from 2012 to 2018, before she became a limited term faculty employee.¹⁵ There is no evidence that any other petitioned-for faculty employees, including visiting employees, have similarly changed job classifications.

The Employer affords different benefits to its faculty employees based on their job classification in a few ways. Adjunct and limited-term faculty employees share the same wage

¹³ There are 30 limited term and 101 adjunct faculty employees in the College of Arts and Sciences, 8 limited term and 20 adjunct faculty employees in the School of Business, 2 limited term and 20 adjunct faculty employees in the School of Communications, and 2 limited term and 5 adjunct faculty employees in the School of Education.

¹⁴ I will collectively refer to limited term, visiting, and adjunct faculty employees as “petitioned-for” faculty employees.

¹⁵ Bush testified that she began working for the Employer in 2012 on a limited term contract. However, documentary evidence proves that her initial contract was for an adjunct position, not a limited term position.

structure, paid by the semester hour and based on longevity, whereas permanent faculty employees are eligible for promotion to job titles that earn higher wage rates such as, Associate Professor, Professor, and Senior Lecturer. In addition, most permanent faculty employees are eligible to receive travel and research funds through the University. The University limits visiting faculty employees to non-sabbatical research funds, but allows them to seek travel funds. Limited term faculty employees may only request travel funds and adjunct faculty are not eligible for travel or research funds. The Employer offers health and other benefits to permanent, visiting, and limited term faculty employees who work 18 or more credit hours per year. Adjuncts and limited term faculty employees who work less than 18 credit hours earn a portion of those benefits, but not the full array.

Faculty employees' responsibilities also vary by job classification. Permanent faculty employees have teaching, scholarly, and service duties.¹⁶ For example, tenure track faculty employees might teach classes, perform research in their area of study, and mentor students on campus.¹⁷ Petitioned-for faculty employees do not have a scholarly requirement and have little to no service obligations, though the Employer prefers they meet and advise their students.¹⁸ Since limited term and adjunct faculty employees are limited to a teaching role and often spend less time on campus, they have minimal contact with other faculty. Limited Term Assistant

¹⁶ The record did not provide any specific example of research or other activities that would satisfy the scholarly requirement.

¹⁷ Although the Employer considers them permanent, lecturer track faculty employees have more teaching responsibilities, but have the same scholarly and service activities.

¹⁸ Despite the faculty handbook and Dr. House's testimony briefly referencing "a little bit of service component" for visiting and limited term faculty employees, there is no such requirement in practice. The faculty handbook states that the Employer evaluates visiting and limited term faculty employees based on the same factors — "normally teaching and service." However, Limited Term Assistant Professor Dr. Catherine Bush and Communications School Adjunct Sharon Eisner testified that they were either unaware of service requirements and were never evaluated on such requirements. The Employer did not call any visiting or limited term faculty employees to rebut either Bush's or Eisner's testimony.

Professor Bush testified that she “just go[es] to my class and teach[es],” so her interactions are confined to limited term and adjunct faculty employees in her department.

The differences in responsibility between permanent and petitioned-for faculty employees affect their employment in other ways. The Employer expects permanent and visiting faculty employees to remain with the university for long periods of time. As a result, the Employer conducts a national search involving the school’s dean, department chair, and department search committee when filling a permanent position. After the national search, the Employer’s committee recommends a final candidate to the provost and president for approval. All permanent faculty employees have probationary periods in which they are evaluated based on teaching, scholarly, and service components, including an annual self-review, annual chair review, annual mid-point reviews, and student evaluations. Reviewers include the school’s dean, provost/executive vice president, and president. Based on these evaluations, all permanent faculty employees except visiting faculty may be promoted along their track. For example, a lecturer may attain a senior lecturer designation and continuing track faculty may earn associate professor or professor titles. Visiting faculty employees are not subject to this evaluation process and cannot receive promotions.

The Employer seeks and evaluates limited term and adjunct faculty employees differently. Limited term and adjunct faculty employees are hired through a local or regional search, rather than a national search. Typically, a department chair posts positions at nearby universities and “hires are done purely at a department level.” Temporary contracts are shorter, either one semester (adjunct faculty) or one year long (limited term faculty), and there is no expectation of continued employment. Additionally, since limited term and adjunct faculty employees are not required to perform service or scholarly activities, the Employer bases its evaluations on these employees on annual student evaluations and the department chair’s

observation of their teaching. Visiting faculty employees receive the same evaluation process as the other petitioned-for faculty. Also like visiting faculty, limited term and adjunct faculty employees are not eligible for promotions.

III. ANALYSIS

As a preliminary matter, I will not consider “instructors” to be an appropriate inclusion in the unit, since there is no evidence the Employer actually employs instructors or otherwise uses the job classification. Thus, I will not discuss instructors during my analysis of other job classifications and I find it inappropriate to include the designation in a bargaining unit.

This case presents two basic issues: whether the petitioned-for faculty employees are managerial employees due to their participation in the shared governance of the university, and whether the petitioned-for faculty employees have a community of interest with one another, separate and apart from the excluded faculty employees, such that it constitutes an appropriate unit for collective bargaining. I will address each issue separately, beginning with a statement of relevant Board law before applying it to the facts in this case. Finally, I will conclude by addressing the Employer’s arguments regarding the necessity of a mail ballot election and the appropriate eligibility formula.

A. *Pacific Lutheran* — Are Petitioned-For Employees Managerial Employees?

i. Relevant Board Law

In *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), the Supreme Court held that faculty employees at Yeshiva University were managerial employees and therefore excluded from the protections of the Act, including, most relevantly, the right to join a labor union. “Managerial employees are defined as those who ‘formulate and effectuate management policies by expressing and making operative the decisions of their employer.’” *Id.* at 682 (1980), quoting

NLRB v. Bell Aerospace Co., 416 U.S. 267, 288 (1974). “[Managerial] employees are much higher in the managerial structure than those explicitly mentioned by Congress which regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary.” 444 U.S. at 682 “Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as a managerial employee only if that employee represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” *Id.*

Over the next three decades, the Board issued nearly two dozen decisions involving college and university faculty organizing and whether those faculty employees were managerial employees under the Act. *Pacific Lutheran University*, 361 NLRB 1404, 1418 fn. 30 (2014). After decades of experience deciding managerial questions in the faculty setting, the Board clarified and narrowed the scope of the inquiry in *Pacific Lutheran University*. *Id.* at 1420.

In *Pacific Lutheran*, the Board established five factors indicative of the managerial status of college and university faculty. The Board found that three of these decision-making areas — academic programs, enrollment management, and finances — are primary areas of decision-making, and therefore more important than the other two areas. The other two secondary areas of decision making are academic policy and personnel policy and decisions. *Id.* at 1420.

The *Pacific Lutheran* Board also reasoned that, “In order for decisions in a particular policy area to be attributed to the faculty, the party asserting managerial status must demonstrate that faculty actually exercise control or make effective recommendations.” *Id.* at 1421. Both in *Pacific Lutheran* and in subsequent cases, the Board reaffirmed that when the Employer’s position is that faculty exercise authority through participation in committees, the petitioned-for faculty will not be found to have authority unless the Employer shows that the petitioned-for faculty exert majority control in those committees. *University of Southern California*, 365

NLRB No. 11 (2016) (Board upheld the Regional Director’s determination that the employer failed to show that the petitioned-for unit was the majority on governance committees); *Pacific Lutheran*, 361 NLRB at 1421 fn. 36, citing *University of Great Falls*, 325 NLRB 83, 95 (1997)); *Cooper Union of Science and Art*, 273 NLRB 1768, 1775 (1985) (“[F]ull time faculty (bargaining unit) members constitute a numerical minority of most of the governance committees and constitute something less than a voting majority on about half of them”).

ii. Petitioned-for Faculty Employees are Not Managerial Employees Under *Pacific Lutheran*

Before I can consider the five factors described in *Pacific Lutheran*, the Employer must first show that the petitioned-for faculty employees pass the “majority rule” threshold. Petitioned-for faculty employees must exercise majority control over a committee in order for the committees’ authority to factor into their managerial status, regardless of how much governing authority the committee possesses. Thus, if the petitioned-for faculty employees do not exert majority control in any of the Employer’s governing bodies, they cannot be managerial employees.

The evidence establishes that limited term, visiting, and adjunct faculty employees, either separately or collectively, do not constitute a majority of any of the Employer’s governing bodies. The Employer’s shared governance model allows faculty employees to be involved in decisions regarding various academic matters. Faculty employees exercise that authority both by sitting on a committee, such as the Academic Council, standing committees, or other university and school-specific committees, or by voting at faculty meetings.

However, although they may participate in the Employer’s governing bodies, petitioned-for faculty employees are not a controlling majority in any of them. Limited term and adjunct faculty employees cannot be a majority of the Academic Council because they are prohibited

from serving on all but one of the Academic Council's 19 seats. Similarly, despite the theoretical possibility that they may serve on five of the Employer's 14 standing committees, there is no evidence that any limited term or adjunct faculty employees currently serve on any standing committees. Consequently, they cannot therefore constitute a majority of any of those standing committees. In addition, although the Employer claims that limited term and adjunct faculty employees may serve on any other university or school-specific committees, it presented no substantive evidence regarding those committees. For example, the record does not state how many committees exist in each school, who serves on those committees, or what decisions or recommendations the committees have made. Coupled with the fact that there are only two visiting faculty employees working university wide, there is no evidence that any petitioned-for faculty employees currently serve, have recently served, or make up a majority of those committees.

Petitioned-for faculty employees also do not exercise majority control during faculty meetings. According to Provost/Executive Vice President House, the Employer has about 577 faculty employees. Only 178 of those faculty employees are limited term, visiting, or adjunct employees. Moreover, the petitioned-for faculty employees' potential voting impact is weakened further by voting requirements. Only faculty employees who teach 18 or more credit hours are eligible to vote, meaning that many adjunct faculty employees could attend faculty meetings but would be prohibited from voting.

Notwithstanding their minority status during faculty meetings, the evidence suggests that the petitioned-for faculty employees do not exercise the limited control they possess. For instance, Limited Term Professor Bush testified that she had only attended one faculty meeting in almost seven years with the Employer. Adjunct Faculty Eisner attended one faculty meeting in 11 years. The Employer did not call any faculty employees to testify regarding their

attendance at faculty meetings, nor does it keep attendance or voting records from those meetings. As a result, there is no evidence that petitioned-for faculty employees have majority control over any level of the Employer’s shared governance procedure.

Since the Employer has failed to prove that the petitioned-for faculty employees exert majority control at any level, there is no danger that their loyalty will be divided between Petitioner and the Employer. See *Yeshiva*, 444 U.S. at 682 (“[A]n employer is entitled to the undivided loyalty of its representatives.”) Therefore, it is unnecessary for me to evaluate the Employer’s Academic Council or university and school-specific committees under *Pacific Lutheran’s* five-factor test. I find that the petitioned-for faculty employees are non-managerial employees under the Act.¹⁹

B. *PCC Structural*s — Is the Petitioned-For Unit Appropriate?

i. Relevant Board Law

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996). Thus, the Board determines whether the unit a petitioner proposed is appropriate because employees in the petitioned-for unit are readily identifiable and share a sufficiently distinct community of interest. *PCC Structural*s, 365 NLRB No. 160, slip op. at 7 (2017) and *United Operations*, 338 NLRB 123, 125 (2002). Under this traditional community of interest approach, the Board considers the interests of both the petitioned-for employees and those employees to be excluded from the petitioned-for unit to conduct its analysis. The Board

¹⁹ In its post-hearing brief, the Employer argues that the Board should reverse *Pacific Lutheran*, arguing that it reinstitutes a heightened standard for proving managerial status that the Supreme Court has previously rejected. I am, however, obligated to follow established Board precedent.

will not approve fractured units; that is, combinations of employees that have no rational basis. *Seaboard Marine*, 327 NLRB 556, 556 (1999).

In conducting this analysis, the Board uses a multifactor test that assesses whether the employer has organized the petitioned-for employees in a separate department; whether they have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; have frequent contact with other employees; have distinct terms and conditions of employment; are separately supervised; are functionally integrated with the employer's other employees; and interchange with other employees. *United Operations*, 338 NLRB at 123; *PCC Structural*s, 360 NLRB No. 160, slip op. at 11. Particularly important to this determination are the organization of the facility and the utilization of skills. *Gustave Fisher*, 256 NLRB 1069, 1069 fn. 5 (1981). All relevant factors must be weighed in determining community of interest. Although a plant-wide unit is presumed appropriate, *Airco*, 273 NLRB 348, 349 (1984), there is no requirement of a plant-wide unit and the Board generally attempts to select the smallest appropriate unit encompassing petitioned-for employees. *Bartlett Collins Co.*, 334 NLRB 484, 484 (2001), citing *R&D Trucking*, 327 NLRB 531, 532-533 (1999) and *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967).

ii. The Petitioned-For Unit is Appropriate

The balance of factors demonstrates that visiting, limited term, and adjunct faculty employees share a sufficiently distinct community of interest with one another, specifically with respect to their skills and training, job function, supervision, and terms and conditions of employment. Furthermore, the Employer's argument that the petitioned-for unit must be broken

into four separate units based on school is unpersuasive. The petitioned-for unit consists of a university-wide undergraduate school group that constitutes an appropriate unit under the Act.

In applying the Board's multi-factor test in *PCC Structural*s, I will review the factors individually. For each, I will first compare the petitioned-for job classifications against one another and against the excluded faculty employees. Then, I will state how each factor weighs into whether the petitioned-for unit should be broken into four separate units. Finally, after my review of all factors, I will summarize my finding that a single unit comprised of all undergraduate limited term, visiting, and adjunct faculty employees is appropriate for collective bargaining under the Act.

1. Separate Departments

The Employer classifies its schools and departments based on area of study rather than by drawing a traditional line between job classifications. Each school has its own faculty employees. Thus, the Employer groups job classifications that specialize in the same area of study together, regardless of the employees' permanence or longevity. For example, full-time, permanent biology faculty employees, like tenure track and lecturers, work in the same department as limited term, visiting, and adjunct faculty employees who specialize in biology. There is no evidence that any faculty employee receives a job classification in, or otherwise works for, two schools, let alone two separate departments.

I find that this factor does not support that the petitioned-for unit shares a community of interest with one another, to the exclusion of permanent faculty employees. Regarding the four separate units issue, I find that this factor favors separating the petitioned-for unit based on school.

2. Skills and Training

Petitioned-for faculty employees have common skills and training that differ from those of permanent faculty employees. The Employer requires permanent faculty employees to be proficient in more skills than petitioned-for faculty employees. All faculty employees must teach courses centered on their area of study. However, permanent faculty employees are also required to participate in scholarly and service activities. Research in the faculty employee's area of expertise would be considered a scholarly activity. Service activities might include tutoring, advising, or participating on committees. The Employer evaluates a permanent faculty employee's teaching, scholarly, and service activities, whereas the Employer only evaluates limited, visiting, and adjunct faculty employees based on their teaching skill.

Also, most permanent faculty employees have higher minimum education requirements than petitioned-for faculty employees. Aside from lecture track, all permanent faculty employees must have a doctorate degree in order to work in that classification. Limited term and visiting faculty employees need only achieve a master's degree. An adjunct faculty employee's level of education must only meet Southern Association of College Schools requirements. Limited term, visiting, and adjunct faculty employees share a common level of education, below that required of permanent faculty employees. For the above reasons, I find that this factor supports that the petitioned-for unit shares a community of interest with one another, to the exclusion of permanent faculty employees.

As to whether this factor supports separating the petitioned-for unit based on school, a faculty employee's skills and training vary based on school. Although petitioned-for faculty employees share the same minimum education requirements across schools, the skills necessary to teach in each school vary significantly. Undoubtedly, the skills and training required to teach a student how to play the bassoon are vastly different than those required to teach the same

student about accounting principles or how to construct a highway overpass. I find that this factor favors separating the petitioned-for unit based on school.

3. Job Functions

The petitioned-for faculty employees have common job functions that differ from permanent faculty employees. Teaching students remains the central work product for all faculty employees, regardless of classification. There is no evidence to suggest that petitioned-for faculty employees perform that work in a substantially different way than permanent faculty employees. However, unlike permanent faculty employees, petitioned-for faculty employees are not required to conduct research, serve on committees, or perform any other scholarly or service activities as part of their jobs. I find that this factor supports that the petitioned-for unit shares a community of interest with one another, to the exclusion of permanent faculty employees.

The petitioned-for faculty employees' job functions do not vary by school. For example, there is no evidence that an adjunct teaching in the School of Education performs her work any differently than if she taught in the School of Business. The tools of the trade may be different, but the central job function remains the same. I find that this factor favors a single bargaining unit across all undergraduate schools.

4. Terms and Conditions of Employment

Permanent faculty employees have different terms and conditions of employment than petitioned-for faculty employees. Petitioned-for faculty employees, and especially adjunct employees, enjoy fewer benefits than permanent and visiting faculty employees. All permanent faculty employees work at least 24 credit hours per year, are eligible for both travel and research funds, and enjoy the full breadth of employee benefits that the Employer offers. Visiting faculty employees share similar terms to permanent faculty employees, but unlike permanent faculty, are

not eligible for research funds for a sabbatical. Limited term faculty employees may work 24 credit hours per year and enjoy full benefits, but are not eligible for research funding. Meanwhile, adjunct faculty employees often work less course-hours, are ineligible for promotion or travel and research funds, and can only earn a portion of the health insurance benefits available to permanent faculty if they work more than 18 course-hours per year.

Permanent and petitioned-for faculty employees also differ as to their evaluations. The Employer exclusively uses student surveys and department chair observations to evaluate limited term, visiting, and adjunct faculty employees. Permanent faculty employees have a more rigorous evaluation process, including a review of their teaching, scholarly, and service components, an annual self-review, annual chair review, annual mid-point reviews, and student evaluations.

Finally, petitioned-for faculty employees are minimally involved in the shared governance model. Permanent and visiting faculty employees are eligible to sit on any department or university committee, standing committee, or Academic Council seat designated for their department. Though visiting faculty employees theoretically have more involvement opportunity in the Employer's shared governance model than limited term and adjunct faculty employees, there is no evidence that any petitioned-for faculty employee currently sits on a committee, with the exception of the Academic Council. Even though the Employer reserves one seat on the Academic Council for limited term and adjunct faculty employees, a single representative on a 19-member Academic Council is not substantial. Finally, though a limited term or adjunct faculty employee working more than 18 credit hours per year is eligible to vote at a faculty meeting, there is no evidence that any limited term or adjunct faculty employees have exercised that vote.

Based on the above, I find that this factor supports that the petitioned-for unit share a community of interest with one another, to the exclusion of permanent faculty employees.

I also find that this factor favors a single bargaining unit across all undergraduate schools. There is no evidence that petitioned-for faculty employees in one school enjoy or are deprived of any term or condition of employment shared by petitioned-for faculty employees in another school.

5. Supervision

Although the record is scarce regarding day-to-day faculty supervision, the Employer uses a different supervisory structure for permanent and petitioned-for faculty employees. All faculty employees are directly accountable to their school's dean and their department's chairperson. For example, deans and department chairs consider both a continuing track and adjunct faculty employees during their annual evaluations. However, whereas petitioned-for faculty evaluations end with the dean and department chair, a permanent faculty employee's evaluation continues. Along with the school-directed evaluation, permanent faculty employees are evaluated by the school's dean and provost/executive vice president. The dean and provost/executive vice president also make promotion recommendations to the university's president. There is no evidence that the Employer evaluates petitioned-for faculty employees outside of their school's supervisory group. In light of the above, and the record as a whole, I find that this factor supports that the petitioned-for unit shares a community of interest with one another, to the exclusion of permanent faculty employees.

There is no evidence of common supervision between petitioned-for faculty employees across undergraduate schools. The Employer creates a clear divide between the schools regarding who will supervise and evaluate its limited term, visiting, and adjunct faculty. For

example, adjuncts from one school should never expect to be supervised, in any capacity, by a dean, department chair, or any other individual from another school. There is no evidence that another school's dean or department chairs are involved in direct supervision of another school's faculty.²⁰ Therefore, I find that this factor favors separating the petitioned-for unit based on school.

6. Functional Integration

Petitioned-for faculty employees are functionally integrated with permanent faculty employees. All faculty employees teach courses to undergraduate students and further the Employer's goal as an educational institution. Furthermore, even though petitioned-for faculty employees are not required to engage in research or service activities, accrediting bodies allow the university to maintain faculty that only teach and permanent faculty employees that engage in research and other service. In that sense, petitioned-for faculty employees are functionally integrated with the permanent faculty employees in all areas of the Employer's operations, including teaching and the accreditation process. I find that this factor weighs against the petitioned-for unit sharing a unique community of interest, exclusive of permanent faculty employees.

Petitioned-for faculty employees across schools are functionally integrated with one another. Despite teaching diverse areas of study, all schools work collectively to educate the university's undergraduate students. The clearest example of this concept is the core curriculum. Undergraduate students, regardless of major, are expected to choose from a pool of courses that can come from all four schools. Petitioned-for faculty employees from all schools participate in

²⁰ I recognize that one school's faculty employees may sit on a committee that controls the conditions of employment for another school's faculty employees, like promotion or tenure. However, I find such minimal involvement to be an insubstantial level of supervision.

the core curriculum, and are, therefore, fully integrated in the Employer’s educational goal. As such, I find that this factor favors a single bargaining unit across all undergraduate schools.

7. Interchange

There is little evidence that limited term, visiting, or adjunct faculty employees can change job classifications, either to another petitioned-for job classification or to another school in the same job classification. The Employer permits all permanent, visiting, and limited term faculty employees to either seek promotion or to apply for a higher track. Adjunct faculty employees may not formally apply for promotion or for a higher track. According to the record, only two faculty employees have changed positions since 2008. Department Chair Winter transitioned from an adjunct to a limited term, and then to a lecturer between 2008 and 2012. Limited Term Assistant Professor Bush moved from adjunct to limited term faculty in 2018. Although employee interchange is possible, only two instances over the course of 10 years suggests that it is not a routine practice. Similarly, there is no evidence that any faculty employees from one school have transitioned to a position, regardless of classification, with another school.

The lack of significant interchange either within unit positions or with other University employees neither favors nor militates against the petitioned-for unit. On the other hand, the lack of interchange between schools favors separation by school.

8. Other Contact

Adjunct faculty employees have fewer opportunities for contact with other faculty, including both with limited term and visiting faculty employees and with adjunct faculty employees from other schools. In contrast to permanent, visiting, or limited term faculty employees, an adjunct employee may teach as little as one course per semester. Adjunct faculty

employees may only be on campus for one day a week, during which they must teach their course and advise students. In that time, an adjunct faculty employee may have minimal contact with other faculty. For example, Bush testified that when working, she would “just go to my class and teach,” and only came in contact with other limited term and adjunct faculty employees from her department. There is no evidence that petitioned-for faculty employees have regular contact with faculty employees outside of their school or department. Without doubt, the physical location of each school’s buildings around campus may contribute to the lack of contact between faculty employees of each school. However, given their sporadic work schedule, it is increasingly less likely that an adjunct faculty employee will interact with other schools’ faculty. Further, even though limited term and adjunct faculty employees are invited to attend faculty meetings, there is no evidence that limited term or adjunct faculty employees regularly attend those meetings.

As in the case of interchange, this factor neither supports nor militates against the petitioned-for unit but does support separation by school.

Conclusions Based on Multi-factor Analysis

I conclude that petitioned-for employees share a community of interest, exclusive of permanent faculty employees. Limited term, visiting, and adjunct faculty employees are functionally contract employees that share common skills and training, job functions, supervision and terms and conditions of employment that differentiate them from permanent faculty employees. Therefore, I find the petitioned-for unit to be appropriate.

I also conclude that a single unit is appropriate rather than separate units determined by school. All limited term, visiting, and adjunct faculty employees, regardless of school, share common job functions, terms and conditions of employment, and are functionally integrated with

one another. Despite other factors suggesting that four separate units based on school may be *more* appropriate, the Act only requires that the petitioned-for unit be *an* appropriate unit. *Overnight Transportation Co.*, 332 NLRB at 723. If followed, the Employer’s rationale would result in a situation that the Board in *PCC Structural*s sought to avoid — preference given to “subdivision” units. 365 NLRB, slip op. at 8-9. A unit comprised of all undergraduate limited term, visiting, and adjunct faculty employees who work for the university is rational and appropriate. See *Airco*, 273 NLRB at 349; compare *Seaboard Marine*, 327 NLRB at 556.

Although I find that the petitioned-for unit should not include the “instructor” job designation, Petitioner has taken the position that I may order an election in any alternative unit I find to be appropriate. Therefore, I find that a single unit of all limited term, visiting, and adjunct faculty employees is appropriate. Accordingly, I am ordering an election subject to the Petitioner demonstrating administratively to the Region that it has an adequate showing of interest in the unit.

IV. CONCLUSION

Based on the evidence presented at the hearing, I find that the limited term, visiting, and adjunct faculty employees share a sufficiently distinct community of interest under the Board’s traditional criteria. Since the Employer does not employ or otherwise use the job classification “instructor,” it should also be excluded from the bargaining unit.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Including: All limited term, visiting, and adjunct faculty employees at Elon University teaching at least one credit-bearing undergraduate course in the Employer’s College of Arts and Science, School of Communications, School of Education, or Martha & Spencer Love School of Business.

Excluding: All other employees, all tenured and tenure-track faculty, all continuing track faculty, all lecturing track faculty, all employees teaching online courses only, staff with faculty rank, all administrators (including those with teaching assignments), managers, and supervisors as defined by the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by SEIU Workers United Southern Region.

A. Election Details

Both parties were given an opportunity to argue their positions as to the election method, and did so during the hearing and in their post-hearing briefs. The Employer argued that the Board’s preferred method of election is manual and that petitioned-for faculty are only “scattered” because the next semester will not resume until February 2019. Petitioner argues that it would be difficult for petitioned-for faculty to vote in a manual election considering their geographic location and varied work schedules.

Having reviewed the record and the parties' positions, I conclude that holding a **mail ballot** election would be the best means of concluding the election in this matter. Neither party entered evidence in the record regarding specific faculty employee work schedules that showed when and where they would be on campus. Based on the record as a whole, it is clear that limited term and adjunct faculty have wildly divergent work schedules. Adjunct faculty may only be on campus one day per week for a few hours, making it difficult to schedule a manual election. In its post-hearing brief, the Employer even recognized that a manual election might be difficult to coordinate, stating, "Depending on the eligibility formula adopted by the Region in this case, the manual election should be supplemented with a mail ballot period coinciding with a manual election date in order to reach those eligible voters not teaching during the spring semester." On balance, a mail ballot election mitigates the challenges of coordinating an election involving limited term and adjunct faculty and ensures the widest reach to eligible voters.

In light of the above, the election will be conducted by United States mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 4:00 P.M. on **Tuesday, February 19, 2019**, ballots will be mailed to voters from the National Labor Relations Board, Region 10, 233 Peachtree Street, N.E., Harris Tower Suite 1000, Atlanta, Georgia, 30303-1531. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void. Ballots will be returned to National Labor Relations Board Subregion 11, Republic Square, 4035 University Parkway, Suite 200, Winston-Salem, North Carolina 27106-3325.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Tuesday, February 26, 2019, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at 404-331-2896 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Subregion 11 Office on at 2:00 P.M. on **Tuesday, March 12, 2019**. In order to be valid and counted, the returned ballots must be received in the Subregion 11 Office located at Republic Square, 4035 University Parkway, Suite 200, Winston-Salem, North Carolina 27106-3325, prior to counting of the ballots.

B. Voting Eligibility

Both parties were given an opportunity to argue their positions as to the appropriate eligibility formula, and did so during the hearing and in their post-hearing briefs. The Employer argued that the Region should use the look-back formula articulated in *C.W. Post Center of Long Island University*, 198 NLRB 453 (1972). In order to be eligible according to the Employer’s proposed formula, the faculty employee must have taught at least two classes in the last three years, with one class having been taught during the fall 2018 semester. The Petitioner disagrees with the Employer’s proposed formula, arguing that any faculty employee who taught a class during either the spring or fall 2018 semesters should be eligible to vote.

The goal in crafting an appropriate eligibility formula is to “strike a balance between the need for an ongoing connection with a unit and concern over disenfranchising voters who have a continuing interest notwithstanding their short-term, sporadic, or intermittent employment.” *Columbia University*, 364 NLRB No. 90, slip op. at 21-22 (2016), citing *Steiny & Co.*, 308 NLRB 1323, 1325 (1992); and *Trump Taj Mahal Casino*, 306 NLRB 294, 295 (1992). The Board noted that, as here, “There are employees in the unit who, despite not being on the payroll at the time of the election, have a past history of employment that would tend to signify a reasonable prospect of future employment.” *Id.* at 22.

I find the Petitioner’s proposed formula of all spring and fall 2018 eligible faculty employees strikes a reasonable balance, but must include all eligible faculty employees who taught or were contracted to teach at least one class in the academic year of fall 2018 to spring

2019. The Employer's argument that a longer look-back period would be necessary is unpersuasive. Limited term and adjunct faculty are semester-to-semester or year-to-year employees, with no expectation of continued employment. Thus, unlike *C.W. Post Center of Long Island University*, there is no need to look back farther in order to establish a reasonable expectancy of employment through a faculty employee's employment history. Additionally, a failure to extend voter eligibility to those who taught or were contracted to teach in the most recent academic year would disenfranchise voters who have a continuing interest with the bargaining unit.

Based on the evidence adduced at hearing and the positions of the parties, I am directing an election in the units described above according to the following eligibility formula:

All limited term, visiting, and adjunct faculty employees who taught or were contracted to teach during the fall 2018 to spring 2019 academic year, or who taught at least one class in the spring 2018 or fall 2018 semesters.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, February 7, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with these requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the start of the election (February 19, 2019) and copies must remain posted until the end of the election (Tuesday, March 12, 2019). For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

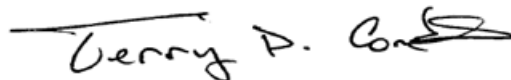
VI. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: February 5, 2019



Terry D. Combs, Acting Regional Director
Region 10
National Labor Relations Board
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